

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

September 13, 2017
9:00 a.m.

Members present: Chairman Gilbert, Councilors: Beaurivage, Boisvert, Butler, Clark, Gegas, Henderson, Joubert, and O'Brien

Members absent: Councilors: Hardy, Hinds, Rawnsley and Tremblay

Also present was Paula Scott, Appeals Clerk

Chairman Gilbert called the meeting to order at 9:00 a.m.

1. Approval of Minutes of the June 14, 2017 Meeting

- ***Councilor Butler made a motion to accept the June 14, 2017 minutes with correction, second by Councilor Clark. Motion passed unanimously with Chairman Gilbert and Councilor Boisvert abstaining.***

2. Status of Appeals

Paula Scott presented an update on the following appeals:

I. New Appeals

II. Decision and Orders that need to be written finalized and issued.

Docket No. 16-16 WC Suzanne Fournier, et al. Appeal

Re: 08/22/16 approval of Alteration of Terrain Permit No. AoT-1149 issued to the Town of Milford
Hearing Officer: David Conley assigned on 11/17/16

Recused: Councilor Henderson

Status: September 8, 2016 received Notice of Appeal. October 10, 2016 receipt of Appeal letter. Council accepted the Appeal at their November 9, 2016 meeting. November 9, 2016 issued Appeal accepted letter. December 12, 2016 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 10:30 a.m. 1/17/17 received Motion to Intervene from the Town of Milford. 1/23/17 PHC was held, Town of Milford's Motion to Intervene was granted and a hearing was scheduled for April 12, 2017 at 9 a.m. February 8, 2017 received Appearance from Atty. Christopher Aslin for DES. 2/15/17 received Town of Milford's Motion to Remand, etc. 2/17/17 received Appellants' Objection to Town of Milford's Motions and also received their Witness and Exhibit list. 2/23/17 received DES' Witness and Exhibit List. March 6, 2017 received State's First Request for Information from Appellants. March 7, 2017 received Appellant's Request for Information from the State. 3/9/17 received State's Motion to Dismiss. 3/13/17 received Objection to State's Motion to Dismiss. 3/20/17 Hearing Officer requested copies of attachments referenced in Notice of Appeal that were not attached. 3/22/17 received attachments (exhibits) referenced in the Notice of Appeal as requested by the Hearing Officer. April 3, 2017 received State's Motion to Continue Hearing. 4/4/17 issued Order granting State's Motion to Dismiss the Appeal. April 27, 2017 received Appellants' Motion for Rehearing. May 2, 2017 received Objection to Motion for Rehearing. 5/10/17 Council deferred action on the Motion for Rehearing to next meeting for their attorney's opinion. No attorney's opinion has been received. June 14, 2017 Council deferred

action on the Motion for Rehearing to the next meeting (9/13/17) for their attorney's opinion. September 8, 2017 received Appearance from Atty. Richard Head for the Appellants.

- ***Councilor Boisvert made a motion to defer action until the October meeting, second by Councilor Butler. Motion passed unanimously.***

III. Hearings or PHCs Pending

Docket No. 16-10 WC (PNA) – Town of Lincoln Appeal

Re: 5/20/16 Administrative Order No. 16-012 WD

Hearing Officer: David Conley assigned on 7/18/16

Status: June 17, 2016 received Notice of Appeal. 6/20/16 issued receipt of Appeal letter. Council accepted the appeal at their July 13, 2016 meeting. 7/13/16 issued Appeal accepted letter. 7/29/16 received Appearance from Attorney General. December 14, 2016 issued Notice of Pre-Hearing Conference scheduled for January 23, 2017 at 11:30 a.m. PHC was held on 1/23/17 with a 2nd PHC scheduled for April 10, 2017 at 9 a.m. April 10, 2017 issued 2nd Pre-hearing Order with deadlines for filing. May 12, 2017 received Assented-to Motion for Extension of Time. 5/15/17 issued letter granting Assented-to Motion. 5/25/17 received Motion for Summary Judgment and Incorporated Memorandum of Law. June 26, 2017 received Objection to and Cross Motion for Summary Judgment and Incorporated Memorandum of Law. July 19, 2017 received Appellant's letter re Intent to submit SurReply to State's reply to Objection. 7/20/17 received DES' Reply to Appellant's Objection to Motion for Summary Judgment. 7/27/17 received Town of Lincoln's SurReply.

Docket No. 16-19 WC Patricia Rodrigues and John Corduff Appeal

Re: 8/31/16 approval of after-the-fact Alteration of Terrain Permit No. AoT-1154 issued to Gretchen Fowler, Trustee of the George R. Graves Revocable Trust

Hearing Officer: David Conley, Esq., assigned on 1/17/17

Status: October 3, 2016 received Notice of Appeal. 10/10/16 issued receipt of Appeal letter. Appeal initially appeared to be untimely. Based on information subsequently received, Appeal may be timely. If the Council determines that the Appeal was timely filed, it is likely that an Insufficient Appeal letter will have to be sent. A motion was made and passed to consider the Appeal timely filed on November 9, 2016. 11/9/16 issued insufficient Appeal letter. December 9, 2016 received revised Appeal. 12/21/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at January 11, 2017 meeting. Council accepted the Appeal at the January 11, 2017 meeting. 1/11/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing Conference scheduled for February 22, 2017 at 10 a.m. February 17, 2017 received Appearance from Atty. Allen Brooks for the Department. 2/21/17 received email request from Appellant to postpone PHC due to medical event. 2/21/17 issued Ruling granting postponement. March 21, 2017 issued Notice of Pre-hearing Conference scheduled for April 10, 2017 at 10 a.m. April 10, 2017 issued Pre-hearing Order scheduling hearing for July 12, 2017. June 2, 2017 received Appearance of Attorney Timothy Britain on behalf of permittee, Affidavit of Gretchen Fowler, Motion to Intervene, Motion to Continue and Motion to Dismiss. 6/5/17 received Appellants' Request to Continue. 6/8/17 received Objection to Motion to Dismiss. 6/9/17 issued letter ruling on Motions to Intervene, Continue Procedural Deadlines and hearing and Appellants' Motion to Continue. The Hearing is now scheduled for October 11, 2017 at 9 a.m. 6/16/17 received Reply to Appellants' Objection. 6/23/17 received Answer to Reply to Appellants' Objection. 6/28/17 received Addendum to Answer to Reply to Appellants' Objection and Appearance of Harriet Cady with the Appellants. July 31, 2017 received Motion to Request Extension of Procedural Deadlines. August 1, 2017 issued letter granting Motion to Request Extension of Procedural Deadlines. 8/1/17 issued Decision and Order granting Permittee's Motion to Dismiss. Docket is Closed.

Docket No. 17-01 WC (PNA) – Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter.

February 17, 2017 received Revised Notice of Appeal. March 1, 2017 issued Receipt of Revised

Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council

accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017

issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 9 a.m. 4/12/17 received

Appearance for Atty. Christopher Aslin. May 2, 2017 issued Pre-hearing Order scheduling hearing

for September 13, 2017 at 9 a.m. August 14, 2017 issued 2nd Pre-hearing Order scheduling a 3rd
PHC for Oct. 30, 2017 at 11:30 a.m.

Docket No. 17-03 WC – Town of Hampton, NH Appeal

Subject: 1/13/17 Administrative Order No. 17-001 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: February 10, 2017 received Notice of Appeal. 2/15/17 issued Receipt of Appeal letter.

Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at

their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of

Pre-hearing Conference scheduled for May 2, 2017 at 10 a.m. 4/12/17 received Appearance for

Atty. Mary Maloney. 4/25/17 received DES' Assented-to Motion to Continue. May 1, 2017 issued

letter granting Assented-to Motion to Continue. 5/2/17 issued Notice of Pre-hearing Conference

scheduled for May 15, 2017 at 9 a.m. 5/11/17 received DES' Assented-to Motion to Continue

Hearing. 5/12/17 issued letter granting Assented-to Motion to Continue and rescheduled PHC to

July 17, 2017 at 9 a.m. June 7, 2017 issued letter rescheduling PHC to July 24, 2017 at 10 a.m.

July 24, 2017 issued Pre-hearing Order scheduling a 2nd PHC for Oct. 10, 2017 at 9 a.m. and the

Hearing for December 13, 2017 at 9 a.m.

Docket No. 17-06 WC – Town of Hampton, NH, North Hampton Water Commission and Town of North Hampton Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter.

Council accepted the appeal at the May 10, 2017 meeting. 5/11/17 issued Appeal accepted letter.

5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07

WC). 5/17/17 received Appearance from Atty. Marcia Brown. 5/18/17 received Motion to

Intervene. 5/25/17 issued ruling Granting Motion to Consolidate and Motion to Intervene. 5/25/17

issued Notice of Pre-hearing Conference scheduled for June 12, 2017 at 9:30 a.m. 5/29/17

received State's request to Continue Pre-hearing Conference. 6/7/17 issued letter granting

request and rescheduling PHC for July 24, 2017 at 9 a.m. 6/13/17 received Request to Continue

PHC. 6/15/17 issued letter granting Request to Continue and rescheduling the PHC for Aug. 14,

2017 at 10 a.m. 6/19/17 received Appearance of Attorney Jason Reimers and Assented-To

Petition to Intervene. 6/22/17 issued letter granting Petition to Intervene. August 24, 2017

received Parties agreed to Procedural Schedule and Request to Modify PHO. 8/25/17 issued

letter granting request. September 8, 2017 received Withdrawal of Appearance from Atty.

Christopher Aslin and received and Appearance from Atty. Mary Maloney.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal**3. New Business**

- a. Env-Dw 304 Emergency Bulk Water Supplies for Public Water Systems

Shelley Frost and Debra Sonderegger, Drinking Water and Ground Water Bureau

These rules are up for re-adoption. Stakeholder meetings have been held. Comments were noted. Public hearing will be November 13th. Questions were addressed and comments made. Council expressed interest in water withdrawals and backflow discharges from/to surface water by large trucks (examples of construction and fertilizer trucks). They asked that the concern be brought to the Watershed Bureau and Director Forbes and more to be addressed at the next meeting. Steve Roy said it has been addressed and noted the threshold that has been made with 20,000 gallons or more. It was asked to get a copy of that fact sheet. Steve is to send the directive to Carolyn and distribute to the Council.

b. Env-Wq 403 Large Groundwater Withdrawals

Steve Roy and Holly Green, Drinking Water and Ground Water Bureau

Steve gave a brief summary. These rules expire October 17th. A large withdrawal is any withdrawal in excess of 57,600 gallons per day. There are no changes to the existing rules in this proposed readoption. Questions were addressed and comments made.

4, **Old Business**

5. **Next Meeting**

October 11, 2017 at 9:00 a.m.

6. **Adjournment**

- ***Councilor Beurivage made a motion to adjourn, second by Councilor Butler. Motion passed unanimously.***